

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BERNARD ESDAILLE,

Petitioner,

97 CV 2311 (SJ)

- against -

MEMORANDUM AND
ORDER

LEONARD PORTUNONDO, Superintendent
of Shawangunk Correctional Facility,

Respondent.

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A P P E A R A N C E S:

BERNARD ESDAILLE
I.D.# 87-T-1654
Shawangunk Correctional Facility
P.O. Box 700
Wallkill, NY 12589
Petitioner, Pro Se

CHARLES J. HYNES
Kings County District Attorney
210 Joralemon Street
Brooklyn, NY 11201
By: Amy Applebaum, Esq.
Assistant District Attorney
Attorneys for Respondent

JOHNSON, District Judge:

Bernard Esdaille ("Petitioner" or "Esdaille") has petitioned this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner believes his state court conviction should be reversed because due process violations were committed during his trial by the prosecutor and the trial judge. Respondent moves to dismiss the petition

as time-barred. For the reasons stated below, the petition is dismissed.¹

BACKGROUND

On April 28, 1981, Petitioner shot Victor McEaddy ("McEaddy") in the head and Egan Francis ("Francis") in the jaw. On May 4, 1981, McEaddy died from his wounds. Francis remained hospitalized for nine days and had his jaw wired shut for four and one-half months. On December 23, 1987, following a jury trial, Petitioner was convicted of one count of Murder in the Second Degree (N.Y. Penal Law § 125.25[1]), one count of Attempted Murder in the Second Degree (N.Y. Penal Law §§ 110.00/125.25[1]), one count of Assault in the first Degree (N.Y. Penal Law § 120.10[1]), and one count of Criminal Possession of a Weapon in the Second Degree (N.Y. Penal Law § 265.03). He was sentenced to a prison term of twenty-five years to life for the murder count, a consecutive term of imprisonment of six to eighteen years for the attempted murder count, and concurrent terms of imprisonment of five to fifteen years for each of the remaining counts.

Petitioner appealed his conviction to the New York Supreme Court, Appellate Division, Second Department ("Appellate Division") raising the following claims:

(1) Petitioner was denied his due process rights when the complaining

¹ Rule 4 of the Rules Governing Section 2254 Cases for the United States District Courts permits a court to order summary dismissal of a habeas corpus petition if the petitioner is not entitled to relief in the district court.

witness identified him in-court by a photograph, and when an inflammatory photograph of the deceased was introduced into evidence;

(2) Petitioner was deprived of a fair trial because the prosecutor stated during the trial that the Petitioner was engaged in drug sales; the prosecutor shifted the burden of proof when he claimed that the Petitioner had failed to explain why the complaining witness had accused him; and the trial court gave an erroneous instruction on motive; and

(3) Petitioner's sentence was excessive.

On April 9, 1990, the Appellate Division unanimously affirmed Petitioner's judgment of conviction. People v. Esdaille, 160 A.D.2d 811 (2d Dept. 1990).

On April 12, 1990, Petitioner applied for permission to appeal from the Appellate Division order. On June 27, 1990, the New York Court of Appeals denied Petitioner permission to appeal. People v. Esdaille, 76 N.Y.2d 787 (1990). Thereafter, the instant motion was filed on April 25, 1997, in which Petitioner raises the same claims as in his direct appeal with the exception of the claim that his sentence was excessive.

DISCUSSION

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"),² which became effective on April 24, 1996, significantly amended 28 U.S.C. §§ 2244, 2253, 2254 and 2255. As a result, 28 U.S.C. § 2244(d)(1) now provides that federal habeas petitions challenging a judgment of a state court are subject to a one-year statute of limitations.³ The limitation period, with certain exceptions, begins to run either after the completion of direct review of the judgment by the state courts or upon the expiration of the time for seeking such review. See 28 U.S.C. § 2244(d)(1). However,

² Pub. L. No. 104-132, 110 Stat. 1214 (1996).

³ 28 U.S.C. § 2244(d)(1) states:

(1) a 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of --

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

Congress did not provide specific guidelines regarding the retroactivity of this provision, thereby leaving the resolution of that issue to the courts. The Court of Appeals of the Second Circuit has held that in cases where, as here, the judgment of conviction became final before the effective date of the AEDPA, the habeas petition may be filed outside the one-year period but within a "reasonable time" after April 24, 1996. See Peterson v. Demskie, 107 F.3d 92, 93 (2d Cir. 1997). Yet, it declined to set forth a precise definition of "reasonable time."

In Peterson, the court held that the petitioner's filing of his petition seventy-two days after the effective date of the AEDPA was timely. Id. at 93. However, the court stated that "where a state prisoner has had several years to contemplate bringing a federal habeas corpus petition," it saw no need to accord a full year after the effective date of the AEDPA. Id. at 93. Further, the court cautioned that the reasonable time alternative should not be applied with undue rigor. Id.

In order to analyze the effect of the AEDPA on the instant case, it is necessary to reiterate the dates of the relevant events. As set forth above, Petitioner's state court conviction became final on June 27, 1990, when the New York Court of Appeals denied Petitioner leave to appeal further. Petitioner did not file any collateral motions. Esdaille's current habeas petition was filed on April 22, 1997,⁴ nearly seven years after

⁴ Where a prisoner is proceeding pro se, he is deemed to have filed his application when it is delivered to prison officials. Houston v. Lack, 487 U.S. 266,

the completion of his direct appeal and almost one year after the effective date of the AEDPA.

Petitioner has had nearly seven years to contemplate bringing a federal habeas corpus petition. However, he neglected to do so. This Court notes that in this case, Petitioner filed his petition almost one year after the effective date of the AEDPA and more than seven years after his direct appeal was complete. Thus, the Court finds that Esdaille's petition was not filed within a reasonable time as contemplated in Peterson. Accordingly, the Court hereby dismisses the petition as time-barred. See Clark v. Greiner, 97 CV 2483 (E.D.N.Y. July 10, 1997) (habeas petition dismissed as untimely where it was filed over one and one-half years after conviction became final and eleven months and two and one-half weeks after enactment of the AEDPA); Smith v. Stinson, 97 CV 1935 (E.D.N.Y. June 30, 1997) (finding untimely a petition filed more than two years after conviction became final and eleven months and three weeks after enactment of the AEDPA); Calderon v. Artuz, 97 CV 1965 (E.D.N.Y. June 25, 1997) (dismissing petition filed eleven months and three weeks after the effective date of the AEDPA and over four and one-half years after the state court judgment as untimely); DeChirico v. Walker, 97 CV 1456 (E.D.N.Y. June 12, 1997) (finding petition filed almost eleven months after the effective date of the AEDPA, and over four years after his judgment of

273 (1988).

conviction became final was untimely); Oppenheimer v. Kelly, 1997 WL 362216 (S.D.N.Y. 1997) (stating that filing 350 days after the effective date of the AEDPA is unreasonable); Zebrowski v. Keane, 1997 WL 436820 (N.D.N.Y. 1997) (concluding that petition filed more than three years after judgment of conviction became final and more than one year after the effective date of the AEDPA was not timely); Berger v. Stinson, 1997 WL 535227 (W.D.N.Y. 1997) (dismissing petition filed eight days short of a full year after the AEDPA became effective and where the underlying conviction occurred more than a decade ago as time-barred). But see Rivalta v. Artuz, 1997 WL 401819 (S.D.N.Y. 1997) (finding a petition filed six months after the effective date of the AEDPA was timely).

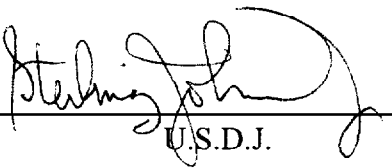
Given that the petition is time-barred, the merits of Petitioner's claims shall not be addressed. In addition, this Court declines to issue a certificate of appealability, as Petitioner has not presented a "substantial showing of the denial of a constitutional right." See Nelson v. Walker, 121 F.3d 828, 832 n.3 (2d Cir. 1997).

CONCLUSION

For the reasons set forth above, Esdaille's petition for a writ of habeas corpus is dismissed.

SO ORDERED.

Dated: April 29, 1998
Brooklyn, New York


U.S.D.J.